



**Cheburet (Suing as the administrator of the Estate of Cheburet Tuitoet (Deceased) v County Government of Baringo & 3 others (Environment & Land Case 77 of 2014) [2022] KEELC 15399 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15399 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 77 OF 2014  
SM KIBUNJA, J  
DECEMBER 20, 2022**

**BETWEEN**

**SAMWEL CHEBURET (SUING AS THE ADMINISTRATOR OF THE ESTATE OF CHEBURET TUITOET (DECEASED)) ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF BARINGO ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR-BARINGO ..... 2<sup>ND</sup> DEFENDANT**

**MINISTRY OF LANDS & HOUSING ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit through the plaint dated and filed on the March 7, 2014, seeking for declaration that Baringo/Kapchomuswa "A"/577, the suit land, belongs to the deceased's estate, order directing 2<sup>nd</sup> defendant to delete name of County Council of Baringo and or County Government of Baringo in the register of the said land and in its place insert the name of the administrator and or heirs of the deceased's estate herein, to be distributed in accordance with the certificate of confirmation of grant issued on May 10, 2013 in Eldoret High Court Probate and Administration No 35 of 2009. The plaintiff also seeks for costs. It is the plaintiff case that the 1<sup>st</sup> defendant built Tereben Primary School in the then unregistered land parcel Baringo/Kapchomuswa A/107 (referred herein as plot 107) belonging to Chebutet Tuitoek (deceased). He lodged a complaint before Baringo Land Adjudication Tribunal, being Land Adjudication Objection No 710 as the against the County Council of Baringo in relation to plot 107. On January 22, 1992, the tribunal ruled that the County Council of Baringo had unlawfully built Teberen Primary School on Cheburet's land. The tribunal ordered that the County Council of Baringo should compensate, Cheburet with Baringo/Kapchomuswa A/577



(referred herein as plot 577) which had been reserved for a Tereben nursery school. The plaintiff averred that the Chebutet Tuitoek (deceased) took possession of plot 577 and developed it until 2001, when a school committee of Tereben primary school sought his eviction in Eldoret Chief Magistrate Case No 120/2011. The plaintiff pleaded that the trial magistrate upheld the decision of the Land Adjudication Tribunal, which determined that Chebutet Tuitoek (deceased) ought to be given land parcel No Baringo/Kapchomuswa A/577 in lieu of his land Baringo/Kapchomuswa A/107 that was developed by the County Council of Baringo. The plaintiff averred that Chebutet Tuitoek (deceased) died while seeking to enforce the said order. That in the Eldoret High Court Succession Cause P/A No 35 of 2009, plot 577, the suit land, was distributed amongst the deceased's heirs. The plaintiff maintained that the administrator of the deceased has not managed to transfer the suit land into the name of the estate of the deceased for distribution as the suit land is still registered in the name the County Council of Baringo, and hence this suit.

2. The 1<sup>st</sup> defendant filed a statement of defence and amended counterclaim dated July 21, 2016, averring among others that Cheburet Tuitoek (deceased) had voluntarily donated his land parcel number Baringo/Kapchomuswa A/107 to the former County Council of Baringo for the construction of Tereben Primary School. The defendant maintained that Cheburet was compensated by an award of 5 acres in Mochongoi settlement scheme through the Chief, Orokwo location and settled on it up to 2007 when he passed on. The 1<sup>st</sup> defendant denied that the plaintiff had beneficial rights over land parcel number Baringo/Kapchemuswa A/577, the suit land, which they stated was donated by Nehemiah Kipyegon, Chemitei Chemweitich, George Cherogony (deceased) and Chemwei Kibowen in 1967. The 1<sup>st</sup> defendant contended that the land was donated to be used by the community and has since been established as Teberen Nursery School. The 1<sup>st</sup> defendant denied that Baringo Land Adjudication Tribunal had held that the County Council of Baringo had unlawfully built a school on the plaintiff's parcel, and maintained that the suit land is public land, and is not available for alienation. The 1<sup>st</sup> defendant contended that plot 577 belongs to the 1<sup>st</sup> defendant and the plaintiff's action of encroaching on the suit land is illegal and interferes with the activities of Tereben nursery school. In their Amended counterclaim, the 1<sup>st</sup> defendant prayed for judgement against the plaintiff and sought a declaration that the 1<sup>st</sup> defendant is the sole registered owner of land parcel number Baringo/Kapchemusa A/577. They also sought for permanent injunctive orders restraining the plaintiff from Baringo/Kapchemusa A/577, eviction order for the plaintiff from the suit land and for his suit to be dismissed with costs.
3. The plaintiff testified as PW2 and called Joseph Kipsetim, Chemwei Kibowen and Laban Belle Kimurchony who testified as PW1, PW3 and PW4 respectively. The 1<sup>st</sup> defendant called Phillip Kipkelum Chebon, Kipyego Cherogony, and Richard Komen, retired chief Orokwa location, who testified as DW1 TO DW3 respectively. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants called John Ongala Lako, the County Land Adjudication Officer Baringo who testified as DW4.
4. The plaintiff, as the legal representative of the estate of Cheburet Tuitoek (deceased), having been so appointed in Eldoret High Court Succession Cause No 35 of 2009 on May 5, 2011, claim to plot A/577 is anchored on the decision of the Baringo Land Adjudication Tribunal dated January 22, 1992. In that decision, the tribunal held that since the County Council of Baringo had built a school on plot 107, belonging to the deceased, he ought to be compensated with plot 577 which had been set aside for a nursery school.
5. That while the defendants did not dispute the existence of the decision by the Baringo Land Adjudication Tribunal dated January 22, 1992, they maintain that the same was successfully appealed against, and through DW1 produced a letter dated 3<sup>rd</sup> April 1992 from one Mr. Herbert Liatema, the then Principal Land Adjudication and Settlement Officer Baringo, addressed to Cheburet Tuitoek



though the Chief Orokwo location. The letter stated that plot 577 belonged to the County Council of Baringo, and that the judgement entered on January 22, 1992 awarding Cheburet Tuitoek plot No 577 was declared null and void. The defendants maintained that the Cheburet Tuitoek had been fully compensated for the plot he donated to County Council of Baringo, with plot 462 in Muchongoi Block III Settlement Scheme, as confirmed through the letter dated the September 30, 1998, by the then Director of Land Adjudication and Settlement Mr AK Cherwon informing Cheburet Tuitoek that he has been offered Plot 462 in Muchongoi Block III Settlement Scheme through the Settlement Fund Trustees. DW1, the former Assistant Chief of Moloï sub-location, Orokwa Location from 1987 to 2003 told the court that even before becoming the assistant chief, he was one of the founding committee members of Tereben primary school. He testified that in 1967, the community donated land towards the establishment of the school. He listed the names of the members of the community who donated their land as the late Cheburet Tuitoek, Cheptim Kipyakwai, Kangongo Chepkurui and Chemwetich Nyekes. He further testified that the parcels of land that were donated were later consolidated and registered as Baringo/Kapchomuswo A/107 measuring 10 acres. That later the same year, some more members of the community, including Nehemiah Kipyegon Cherogony, Samuel Chemitei Chemwetich, Chemwei Kibowen and the late George Cherogony, donated land for the construction of a nursery school. The land was also consolidated and registered as Baringo/Kapchomuswo A/577 and was approximately 15 acres. That the land was fenced off by the community. DW1 maintained that the deceased, Cheburet Tuitoek, who donated his parcel of land towards the construction of Tereben primary school was compensated with a parcel of land in Muchongoi known Baringo/Mochongoi Scheme Block 3/462. He testified that this compensation followed the complaints raised by Cheburet Tuitoek, which was escalated by DW1 to the District Commissioner, who later allocated plot 462 in Muchongoi settlement scheme to the deceased as compensation for the land he had donated towards plot 107. He further revealed that among those who had donated their land, Cheburet was the only one who was compensated with another parcel of land. The assertions of DW1 were affirmed by DW2, Mr Kipyegon Cherogony, who confirmed to court that in 1967 he donated 2.5 acres of his land, together with Samuel Chemitei Chemwetich, Chemwei Kibowen and the late George Cherogony, to the County Council of Baringo that was consolidated and registered as Baringo/Kapchomuswo A/577, that was reserved for the construction of the nursery school. When DW4, Julius Ougala, The Baringo County Land Adjudication officer testified, he stated that plot 577 was adjudicated to Baringo County Council and a title issued on April 2, 1988. He further stated as per section 25 and 26 of [cap 284](#), the public was invited to object to the issuance of the title but no complaint or objection was received. DW4 testified that the Objection No 710 of 1992 was raised against parcel 107 on which Teberen Primary School is situated, that was registered in the name of Baringo County Council. He further stated that the decision to enter an award as against parcel 577 was erroneous, and that the said award was later set aside. He produced an adjudication record in respect to Baringo/Kapchomuswo A/577 as exhibit and it shows that indeed the suit land was initially reserved for Tereben Nursery School, then it cancelled as per objection No 710 and later reserved again for Tereben Nursery school on April 24, 1992. That cancellation is what DW4 informed the court as an erroneous entry that was made after Objection 710 was heard and determined. DW4 further explained to court that, after the said error was made, the officer in charge (Principal Land Adjudication and Settlement officer) wrote to Cheburet Tuitoek on April 3, 1992 informing him that parcel 577 belongs to the County Council of Baringo and that objection No 710 was not in relation to plot 577. The letter informed the deceased that it was unlawful for him to be allocated plot 577 which was owned by the County Council of Baringo.

6. The learned counsel for the 1<sup>st</sup> defendant and 2<sup>nd</sup> to 4<sup>th</sup> defendants filed their submissions dated the September 12, 2022 and September 20, 2022 respectively, which the court has considered.



7. The following are the issues for the court’s considerations;
- a. Whether the plaintiff has established a lawful or legitimate claim of entitlement to the suit land.
  - b. Whether any objection was raised over the suit land by the plaintiff’s late father during the adjudication process.
  - c. Who between the plaintiff and 1<sup>st</sup> defendant is entitled to the legal ownership of the suit land.
  - d. Who pays the costs.
8. The court has carefully considered the pleadings, evidence tendered, submissions by the learned counsel for the defendants, superior courts decisions cited thereon, and come to the following determinations;
- a. From the green card of Baringo/Kapchomuswo A/577, it is clear to court that the County Council of Baringo was registered as the first proprietor of the suit land on November 15, 2001. A certificate of official search dated February 12, 2015 also indicated that Baringo/Kapchomuswo A/577 is registered in the name of the County Council of Baringo and is reserved for Teberen Nursery School. The doctrine of indefeasibility of title as established under the Torrens system of registration is anchored on section 26 of the [Land Registration Act](#), No 3 of 2012. The title of a registered proprietor remains indefeasible unless it is shown the title was obtained through fraud or misrepresentation to which the title holder is proved to have been a party to. Section 26 (1) of the [Land Registration Act](#) provides:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The plaintiff is challenging the title of plot 577 based on events that took place before the suit land was registered. However, this claim has been countered by the defendants who have demonstrated that the suit land was declared as public land belonging to the 1<sup>st</sup> defendant prior to its adjudication and registration.

- b. The evidence tendered by DW1 and DW2 has demonstrated to court that the late Cheburet Tuitoek and 3 others indeed donated portions of their lands to the community in 1967 for the establishment of Tereben primary school. The lands parcels were consolidated and registered as Baringo/Kapchomuswo A/107, as seen from the Certificate of official search dated January 31, 2017, that was produced as defence exhibit 3. The parcel of land is registered in the name of County of Council of Baringo, and has been reserved for Teberen Primary School. The four members of the community who donated the land to the community for the establishment of the Tereben primary school, did it by their free will and for the betterment of the community. However, it appears the late Cheburet Tuitoek later expressed his desire to be compensated for the portion of the he had contributed. That desire was taken up by DW1, who was the then area



chief, and escalated to the relevant offices leading to the late Cheburet Tuitoek being allocated plot 462 within Muchongoi Block III Settlement Scheme measuring 1.6 ha on September 30, 1998, as an alternative to the portion he had given up earlier.

- c. There is therefore, sufficient evidence to show that late Cheburet Tuitoek was adequately compensated for the land he had donated to the community, to make plot 107 for Tereben Primary School, through the allocation of the plot 462 within Muchongoi settlement scheme. I therefore find that the late Cheburet Tuitoek did not suffer any injustice nor was he treated unfairly by the County Council of Baringo. If anything, it is the the members of the community and the children of Tereben nursery school that have endured suffering as the late Cheburet Tuitoek and his family adamantly continue occupying the suit land despite the numerous demands for them to give vacant possession. The late Cheburet Tuitoek and his family ought to have relocated from plot 577, the suit land, to the land he was allocated in Muchongoi Settlement Scheme but did not do so. The evidence adduced further show that on the August 2, 1999, the then Senior Chief RK Komen issued Cheburet Tuitoek with a three-month notice to vacate the nursery school by November 5, 1999 to his allocated land at Muchongoi. The letter was a start of several other letters to come to Cheburet Tuitoek and later to his children to desist from occupying the suit land. On December 7, 2000 the then District Officer Kabaranet division, Ibrahim Diba, wrote to the late Cheburet Toitoek demanding him to vacate plot 577 belonging to the Tereben Nursery school and to stop the illegal felling of trees. This was reiterated on 2January 5, 2002, by the then District Officer Kabaranet division, GL Lesootia, who wrote to the late Cheburet Toitoek demanding him to vacate from the suit land and stop the illegal felling of trees within the school compound.
- d. That from the documents availed to the court on the decision in Land Adjudication Objection No 710, it is clear that the late Cheburet Tuitoek had raised an objection on land parcel 107, but he was awarded plot 577, the suit land, that was not a subject of the objection, and which actually belonged to the County Council of Baringo. The fact that the award was over a parcel of land that was not the subject matter of the objection means the decision was not only illegal but also irregular. It follows that the subsequent action by the Principal Land Settlement officer to write to the late Cheburet Tuitoek informing him that the award of plot 577 to him was illegal since he had not raised any objection against the said title, and that the owner of the plot, the County Council of Baringo, had not allocated the land to him, was a proper step in correcting the obvious illegality that was otherwise null and void.
- e. When Cheburet Tuitoek died in 2007, his family insisted on burying him on the suit land, probably to solidify their claim on the land. On February 28, 2007, the then District Commissioner Baringo, K.Chedotum, wrote to the then senior chief, Orokwo location, Richard Komen, directing him to stop the burial of Cheburet Tuitoek on the suit land that was planned for March 1, 2007. The burying of family members on plot 577 was indeed an act of defiance by the family of the late Cheburet Tuitoek, which became an issue of concern for the Baringo County Government, through its legal officer James Chetallam, who wrote to the OCS Kabarnet police station on February 12, 2015 requesting for police assistance to stop the burial of a second family member on plot 577. In my view, the actions of the family of the late Cheburet Tuitoek of burying their two family members on the suit land, while its ownership was disputed did not in any way confer title or ownership of the suit land to the deceased or his estate. As stated in section 26 of the *Land Registration Act*, land ownership in Kenya is only determined by registration, and in this case the suit land is registered in the name of the County Council of Baringo, and the plaintiff's attempt to impugn that title has failed.



- f. Consequently, after analyzing the facts and evidence before me, I find that Baringo/Kapchomuswa A/577 belongs to the 1<sup>st</sup> defendant, and is reserved for Tereben nursery school and is therefore, not available to the plaintiff. The plaintiff's case fails in its entirety, while the 1<sup>st</sup> defendant's claim vide the amended counterclaim dated July 21, 2016 succeeds.
- g. That in terms of section 27 of the *Civil Procedure Act* chapter 21 of laws of Kenya, costs follow the events unless for good cause the court orders otherwise. In the circumstances of this case, the plaintiff shall bear the costs in both his claim and counterclaim.
9. In view of the above findings, the court orders as follows;
- a. That the plaintiff has failed to prove his claim under the plaint dated March 7, 2014, to the standard required by the law and the same is dismissed with costs.
- b. That the 1<sup>st</sup> defendant has proved its claim in the counterclaim dated the July 21, 2016 against the plaintiff and the same is hereby allowed in the following terms;
- I. A permanent injunction is hereby issued restraining the plaintiff, administrator of the Estate of Cheburet Tuitoek (deceased), whether by himself, his agents, servants or assignees from leasing, transferring, charging, remaining in possession, developing, or in any other way manner howsoever from dealing with the suit land, Baringo/Kapchomuswa A/577.
- II. The plaintiff, administrator of the Estate of Cheburet Tuitoek (deceased), is hereby ordered to vacate Baringo/Kapchomuswa A/577, the suit land, and deliver vacant possession to the 1<sup>st</sup> defendant within ninety [90] days from the date of this judgement, and in default, eviction order do issue.
- III. The plaintiff shall bear the cost of the counterclaim.

It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 20<sup>TH</sup> DAY OF DECEMBER 2022.**

**SM KIBUNJA, J**

**In The Presence Of;**

Plaintiff : Absent.

Defendants : Absent.

Counsel : Mr Kibii for 1st defendant.

Wilson : Court Assistant.

**SM KIBUNJA, J**

**ELC MOMBASA.**

